



May 4, 2001

Ms. Donna Osborne
Director
Texas State Library & Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2001-1836

Dear Ms. Osborne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146846.

The Texas State Library & Archives Commission (the “commission”) received a request for information related to Invitation for Bid #306-01-8227. You indicate that the property or privacy rights of a third party may be implicated by the release of the requested information. You indicate that by correspondence dated March 2, 2001, the commission notified Greyhound Package Express (“GPX”), the company whose information is responsive to the request, of the request as required by section 552.305 of the Government Code. *See also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). The required notice informs GPX that it may submit to the attorney general, within ten days of receiving the notice, its reasons why the information in question should be withheld. GPX did not respond to this notice or otherwise submit any arguments against disclosure of the requested information.

You explain that the information at issue was marked “confidential” by GPX. Information is not confidential under the Public Information Act simply because the party submitting the information marks it as confidential. Open Records Decision No. 575 at 3 (1990) (citing *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977)), *See also*, Open Records Decision No. 479 (1987) (information is not made confidential by expectation of the submitting party). The information submitted by GPX is therefore not confidential merely because GPX anticipates or requests that it be kept confidential.

Section 552.110 excepts from disclosure a third party's proprietary information, but the applicability of this exception depends on a third party raising the exception and showing how and why it applies. See Gov't Code § 552.110, 552.305(b); Open Records Decision Nos. 661 at 5-6 (1999), 552 (1990), 542 (1990).

Because GPX did not respond to your notice, we have no basis to conclude that this company's information is excepted from disclosure. The submitted information must therefore be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

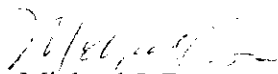
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/rr

Ref: ID# 146846

Encl.: Submitted documents

cc: Ms. Bonnie Juergens
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(w/o enclosures)

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